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In re Application of	:	
HIMMLER et al.	:	DECISION ON
Application No.: 10/520,549	:	
PCT No.: PCT/EP03/06980	:	PAPERS
Int. Filing Date: 01 July 2003	:	
Priority Date: 11 July 2002	:	UNDER 37 CFR 1.42
Attorney's Docket No.: CS8445/LeA 36,137	:	
For: CIS-ALKOXY-SUBSTITUTED SPIROCYCLIC	:	
1-H-PYRROLIDINE-2,4-DIONE DERIVATIVES	:	
SERVING AS PESTICIDES	:	

This is a decision on the submission filed by applicants on 10 April 2006, which was accompanied by, *inter alia*, a declaration of the inventors. The indication in this declaration that inventor Christoph Erdelen is deceased has been treated as a request for status under 37 CFR 1.42.

BACKGROUND

On 01 July 2003, applicants filed international application PCT/EP03/06980 which claimed a priority date of 11 July 2002 and designated the United States. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 22 January 2004. The thirty-month period for paying the basic national fee in the United States expired at midnight on 11 January 2005.

On 06 January 2005, applicants filed, *inter alia*, a transmittal letter for entry into the national stage in the United States accompanied by, *inter alia*, the basic national fee.

On 31 March 2006, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration in compliance with 37 CFR 1.497(a)-(b) and the surcharge under 37 CFR 1.492(h) for filing any of the search fee, the examination fee, or the oath or declaration after the date of the commencement of the national stage were required.

On 10 April 2006, applicants filed the instant submission which was accompanied by, *inter alia*, a copy of a declaration of inventors and a return receipt confirmation of a facsimile transmission received by the USPTO on 09 March 2006. The indication in the declaration of inventors that inventor Christoph Erdelen is deceased has been treated as a request for status under 37 CFR 1.42.

DISCUSSION

Petition Under 37 CFR 1.181

Applicants have provided sufficient evidence to establish that on 09 March 2006 applicants filed a declaration of the inventors. The proof is in the form of the copy of the receipt which bears a date of 09 March 2006 and which itemizes a "Combined Declaration and Power of Attorney" and identifies the above-captioned application number and docket number. Further, practitioner states that the copy of the declaration filed 10 April 2006 is a copy of the declaration originally filed 09 March 2006. Therefore, in view of the receipt and practitioner's statement, the declaration received on 10 April 2006 may properly be accepted as originally received in the USPTO on 09 March 2006. The NOTIFICATION OF MISSING REQUIREMENTS mailed 31 March 2006 is hereby vacated.

Request Under 37 CFR 1.42

The declaration filed 09 March 2006 fails to comply with 37 CFR 1.497(a)-(b). The declaration must include the signature of the legal representative or the signature of all of the heirs (or if there is only one heir, the sole heir). The declaration does not indicate that Angelika Lubos-Erdelen is the sole heir or is the legal representative for the deceased inventor. If the declaration is signed by a legal representative, the declaration should state that this person is the legal representative. Alternatively, applicants' attorney may file a statement certifying that the person signing is the legal representative. If the declaration is not signed by a legal representative and does not indicate that the persons signing are all of the heirs (or the sole heir), then it must be accompanied by a statement by either those signing or by the attorney which sets forth (1) that they are in fact all the heirs (or the sole heir) of the deceased and (2) that no legal representative of the deceased's estate has been appointed or is required by the applicable law to be appointed.

CONCLUSION

For the above reasons, the request for status under 37 CFR 1.42 is **REFUSED**.

The NOTIFICATION OF MISSING REQUIREMENTS mailed 31 March 2006 is **VACATED**.

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

Applicant is required to submit a declaration in compliance with 37 CFR 1.497 and 1.42 within a time period of **TWO (2) MONTHS** from the mail date of this Decision. **THIS PERIOD FOR RESPONSE MAY BE EXTENDED UNDER 37 CFR 1.136(a). FAILURE TO PROPERLY RESPOND WILL RESULT IN ABANDONMENT.** Any request for reconsideration of this decision should include a cover letter entitled "Renewed Submission Under 37 CFR 1.42."


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